

Calaveras Superior Court
Civil Law & Motion Calendar with Tentative
Rulings Friday, April 10, 2020
Hon. David M. Sanders, Courtroom #2

LEE v BANK OF AMERICA, N.A.
17CV42098
PLAINTIFF'S MOTION TO TAX COSTS

On February 27, 2020, after hearing oral arguments on the Court's Order to Show Cause, the Court dismissed the entire case without prejudice. On March 17, 2020, defendant filed a memorandum of costs. On March 18, 2020, plaintiff filed this motion to tax costs.

Code of Civil Procedure section 1032(a)(4) defines defendant as the prevailing party in this matter as a dismissal was entered in defendant's favor. Code of Civil Procedure section 1033.5(a)(1) statutorily allows defendant to be reimbursed \$60 for filing fees. The following items not statutorily prohibited and the Court, in its discretion, awards defendant's request for \$71.09 reimbursement for Federal Express and \$20.84 for electronic filing. The Court disallows the \$180 charges for CourtCall as this was a discretionary cost of convenience for defendant. Therefore, plaintiff's motion is DENIED in part and GRANTED in part. Defendant is awarded costs totaling \$151.93 and denied claimed costs in the amount of \$180.00.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

CHESSON et. al. v KNIGHT & DAY et. al.

18CV43298

DEFENDANTS' MOTION TO COMPEL FURTHER DEPOSITION TESTIMONY OF
PLAINTIFF MARC CHESSON, LEAVE OF COURT TO CONDUCT ADDITIONAL DEPOSITION OF
MARC CHESSON, AND ORDER DEPOSITION OF CAROLINE OWENS.

On June 7, 2018, plaintiffs filed the complaint. Plaintiffs are married at all relevant times. On January 28, 2020, plaintiff Marc Chesson's deposition commenced but was suspended when plaintiff asserted the marital privilege and refused to answer several questions.

(Defendants have not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system; instead, they provided the verbiage of Tuolumne County Superior Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon defendants' failure to comply with Local Rule 3.3.7, this motion would be denied without prejudice. However, in the interests of justice and judicial economy, the Court reaches the merits on this motion.)

Evidence Code section 973(b) allows a party to testify against a spouse in a civil proceeding brought by a married person for the immediate benefit of himself and his spouse. However, Evidence Code section 980 provides that a spouse has a privilege to refuse to disclose, and to prevent another from disclosing, a communication if he or she claims the communication was made in confidence between spouses.

The Court GRANTS defendants' request to compel some further deposition testimony while ensuring the Evidence Code section 980 privilege is not infringed upon.

With regard to the question: "Did you point out any of those cracks to your wife?" The Court GRANTS defendants' request. Defendants are asking about a physical action, not the substance of a conversation.

With regard to the question: "Did anyone tell you of any other defects in the exterior of the home prior to the closing?", the Court GRANTS defendants' request to compel further testimony, with modification to the question. By adding the phrase "other than your wife," the question will not potentially require disclosing privileged marital communication between plaintiff Chesson and his wife. The question is general in nature in an attempt to determine what plaintiff Chesson knew and when he knew of the alleged cracks and is reasonably calculated to lead to the discovery of admissible evidence by potentially disclosing material witnesses. Plaintiff Chesson shall disclose persons other than his wife, if any, who provided him with this information.

The last question, "[H]as your mother-in-law ever spoken to Robert Romero relating to the property?" is appropriate, but there cannot be any follow up that would intrude into the specifics of conversations between plaintiff Chesson and his wife, plaintiff Owens.

The Court GRANTS defendants' request to resume the deposition of plaintiff Chesson. The previous deposition was suspended, not concluded.

The Court GRANTS defendants' request and orders the deposition of plaintiff Owens to go forward as long as she is properly noticed. (Though the Court notes this ruling is not technically required but addresses the issue to avoid any future motion on the matter.) Plaintiff Owens was not deposed and the deposition did not commence as it was cancelled the day before.

Plaintiffs' request for sanctions is DENIED pursuant to CCP §2025.480. The Court finds defendants acted with substantial justification and sanctions would be unjust.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.